

Draft
Minutes of the Delta Protection Commission Meeting
March 25, 1999

1. Call to Order/Attendance. The meeting was called to order at 6:40 p.m. by Chairman Patrick McCarty. Commissioners present were: Brean, Calone, Curry, Ferreira, Harris, Chairman McCarty, Matthews, Vice Chair Mello, Salmon, Sanders, and Yates. Commissioners absent were: Broddrick, Cabaldon, Canciamilla, Hannigan, McGowan, Nottoli, Simas, and Thomson.

2. Public Comments. There were no public comments.

3. Minutes of the January 28, 1999 Meeting. On a motion by Commissioner Harris and a second by Commissioner Ferreira, the draft minutes were approved by voice vote. Chairman McCarty abstained.

4. Chairman's Report, Including Resolutions of Appreciation. Chairman McCarty introduced and welcomed new Commissioners. Commissioner Barbara Matthews, Mayor Pro Tempore of the City of Tracy, is the new representative of the San Joaquin Council of Government. Commissioner Ed Simas, San Joaquin County Board of Supervisors, has been reappointed to the Commission. Commissioner Ryan Broddrick has been reappointed by new Department of Fish and Game (DFG) Director Robert Hight to represent DFG on the Commission. Tom Hannigan has been appointed the new Director of the Department of Water Resources, and is our Commissioner. Commissioner Ron Brean has been reappointed by new Department of Parks and Recreation (DPR) Director Rusty Areias to represent DPR on the Commission. Commissioner Brean recently received the Olmstead Award for leadership and vision within DPR; it is significant because the award is given annually to only one DPR employee.

Chairman McCarty briefed the Commission on upcoming events in the Delta. Jepson Prairie Preserve (far western Primary Zone) is giving tours of its grasslands and vernal pools, Saturdays and Sundays at 11 a.m. through May 9, 1999. He said the next meeting of the Commission is scheduled for Thursday, May 27, 1999, 6:30 p.m., at the Jean Harvie Community Center. On the agenda is the budget and workplan for FY 99-00 and a briefing by the Department of Conservation staff on the Farmland Security Zones Act ("Super Williamson Act").

Chairman McCarty has asked Commissioner Sanders to serve as a committee of one to assist staff in preparing new ideas about the Commission's GIS system and Internet site. He has asked Commissioner Mike McGowan to serve as chair of a committee to assist in the preparation of a strategic plan; now that the Commission has a longer-term life, it needs to think about how it should proceed. Once ideas are outlined, a retreat-type meeting will be scheduled for the Commission to discuss its vision for the future and the steps needed to implement it, in the context of the Commission's legislative mandate.

Chairman McCarty said there is one subcommittee meeting scheduled: a Budget and Finance Subcommittee meeting is scheduled for April 28, 1999, 4 p.m., at the McCarty Company offices in Stockton.

Chairman McCarty noted that included in the mailing packet is a draft resolution of appreciation for Ross Sargent. Ross was instrumental in the creation of the Commission, working with Senator Johnston to bring it to reality, and acting as the Commission's legislative advocate. He read resolution 99-03 for the record. On a motion by Commissioner Yates and a second by Commissioner Calone, resolution 99-03 was adopted unanimously by voice vote.

5. Commissioner Comments/Announcements. Commissioner Harris said that he attended the dedication of the Jepson Prairie Preserve, and that it is a very interesting area. The vernal pools, as well as the flora and fauna, are very interesting to see, and well worth the trip.

Vice Chair Mello said that Reclamation District 563, Tyler Island, has initiated its next dredge project. It took about two years to get the first dredge project (less than 100,000 cubic yards from the North Fork Mokelumne River) through the permitting process, and hopefully the process will be sped up a little bit this time around, because the district has been through it before. He said he would keep the Commission posted on the progress of the project.

6. Attorney General's Report. Dan Siegel said that at the last Commission meeting, a question was raised by Commissioner Curry regarding what laws protect recreational boating in the Delta. Included in the mailing packet were two formal Attorney General opinions, which collectively address that question. The bottom line is that there are protections for recreational boating, but these protections can be trumped or overcome by other public interests, such as promotion of commercial uses of waterways, ecological interests, or public safety interests. Essentially, there are four sources of protection for recreational boating: (1) The California Constitution, Article 10, Section 4, provides the right of access to navigable waterways; (2) Government Code Section 39933 provides a right of access to waterways which are located in or near urban areas; (3) The Public Trust Doctrine, descended from English common law and recognized by the U.S. Supreme Court and the California courts, states that there is a public interest and right to uses of navigable waterways for boating, commercial uses, and ecological uses; and (4) Harbors and Navigation Code Section 600 places some restrictions on local and state entities' ability to restrict boating. It does not, however, prohibit any laws relating to sanitation or pollution, time of day use, speed zones, or special use areas; these can be regulated. In addition to these four laws, there is a provision that recognizes the federal government's paramount right to regulate navigation, so the federal government can basically trump state interests, and California has, by statute, recognized that. Attorney General opinions don't have the same weight as a published judicial opinion, but they are given significant weight by courts in interpreting laws. The opinion issued in 1997 addressed the question of whether the Department of Boating and Waterways (DBW) had the authority to close a waterway in an emergency situation (e.g. flood), and concluded that DBW does have the authority to close a navigable waterway for public safety and welfare purposes. Under these provisions, the State may prefer one public use over another public use. The 1991

opinion addressed the question of whether or not a locality could prohibit the uses of personal watercraft. The opinion concluded that under certain circumstances an entity could impose such prohibitions: (a) the entity would have to legitimately find that the use was incompatible with other public uses; and (b) the entity cannot arbitrarily single out a particular use (for example, if personal watercraft operate the same as some other motorized watercraft, they can't eliminate one; they have to treat everyone equally). To summarize, there are statutes and other provisions that protect recreational boating, but they are by no means absolute.

7. Executive Director's Report. Margit Aramburu said that included in the mailing packet was an article on joint agricultural and wildlife values from American Farmland Trust magazine. Handouts at the meeting included: (1) the updated Commission; (2) a memo excerpted from the agenda packet for the CALFED BDAC meeting (held March 25, 1999, in Bakersfield), outlining bundles of actions which are being developed by CALFED staff for earliest implementation; (3) a fax from the American Farmland Trust staff in Washington D.C. regarding the Supreme Court case about the Iowa Right To Farm Ordinance (issues being raised by adjoining landowners on the impacts of agriculture); (4) the letter to the Corps regarding fish screens, which is referenced in the draft comments on CALFED's Phase II Report; (5) the revised memo of proposed comments on the Phase II Report, based on the input received at the CALFED Subcommittee meeting the day before; and (6) fliers from the Great Valley Center about its upcoming conference.

Ms Aramburu updated the Commission on matters from the last meeting. There was no new information on the survey on pumpouts in Contra Costa County and the Delta; the gentleman who was working on that survey was on loan from EPA, and has since returned. It is unknown when or if the outreach to all the different counties on their pumpouts will go forward. There is no new information about the proposed conservation easement on Fern-Headreach; proponents are still evaluating how they would like to proceed with this project. The Annual Report was sent out for review by the Secretary of Resources and the Governor; it is still at the Resources Agency waiting to be forwarded to the Governor's office. It is hoped that this can be moved along quickly, so it can be forwarded to the Legislature in conformance with the Delta Protection Act. The proposed legislative amendments presented at the January meeting are also at the Resources Agency waiting to be reviewed and forwarded to the Governor's office.

Per the Commission's earlier discussions about possible options for approving regulations as part of the Commission's adopted Resource Management Plan, Ms Aramburu discussed the timeline for processing regulations with the Office of Administrative Law (OAL) under the Administrative Procedures Act. Taking into account the various time requirements for preparing notices of proposed actions, submitting the written materials to OAL prior to a hearing, holding three public hearings, opening a public notice and comment period for revisions to the proposed actions, adopting final language, and undergoing final OAL approval, the overall timeline could be well over a year for approval of regulations.

Ms Aramburu briefed the Commission on new matters. Bradford Island and Fisherman's Cut have received a lot of press coverage; there are derelict vessels and barges, old cranes, and tugboats in the area. The reclamation district is concerned about issues of public safety and their ability to properly maintain the levees in an emergency. They've pressed Contra Costa County and other State and federal agencies to help solve this problem. The County seems to be taking a very aggressive approach; Supervisor Canciamilla's office has been instrumental in spearheading a clean-up program, and Senator Rainey's and Assemblymember Leach's offices are looking for funding. Vice Chair Mello asked about the applicability of the Abandoned Vessels Program; Ms Aramburu answered that the Program only provides for the removal of recreational vessels and some obstructions to navigation. There is not enough funding to address the removal of large commercial vessels (as is the case here). Barbara Matthews asked whether there were any legal means to force the owners of these commercial vessels (which have not necessarily been abandoned) to move them. Ms Aramburu said that there are means, but these take time and financial resources which the Reclamation District does not have.

Ms Aramburu said that CALFED has asked Department of Boating and Waterways and the Delta Protection Commission to work with the recreation community in the Delta to come up with some concepts to enable CALFED to work better with the recreation interests. Ms Aramburu and Commissioners Curry and Brean have been and will continue meeting with representatives of boating and fishing groups and other landowners and interested parties in the Delta to this end. Some material from this group will be presented to the Commission in the near future. Also, as part of the Commission's commitment to work with recreational interests in the Delta, it is anticipated that the Commission would provide a workshop format for these issues to be discussed in the counties around the Delta area.

Ms Aramburu said that CALFED has been looking at North Delta flooding issues. The project work on these issues has been reassigned to Rob Cooke, the head of the Levees Program. They will be establishing a group of landowners and concerned citizens and parties, including Sacramento and San Joaquin Counties, to look at solutions in the North Delta area. Some preliminary meetings have been coordinated and held by Commission staff.

Ms Aramburu said that the first phase of the Delta In-Channel Islands work group pilot project was funded through a Category III grant. The group is now preparing the construction phase and will submit it to CALFED for funding consideration; the proposal is due April 16, 1999.

Ms Aramburu said that she and Lori Clamurro each attended a day of the San Francisco Estuary Project's three-day State of the Estuary Conference. There were interesting discussions on changes to the estuary and improvements that can be made. Lori also attended a Mitten Crab workshop in Sacramento. Several agencies are working together to draft a management plan to prevent the crabs' spread and reduce their impacts; this draft plan will be presented to the federally-chartered Aquatic Nuisance Species Task Force in June for funding consideration.

Ms Aramburu briefed the Commission on other matters of interest: a Western Water article titled "CALFED and the Delta Fix", and material on the Iowa Right to Farm Ordinance. Commissioner Curry said that there was a lot of controversy when the Abandoned Vessels Program funded by Boating and Waterways was first being formed, over whether or not it would include commercial vessels. At one time, commercial vessels were included in the legislation, but were taken out because of the fear that the removal of one large vessel would consume the entire budget for the first year. Ms Matthews added that the owners of these non-abandoned commercial vessels should be held legally and financially responsible for getting these obstructions out of the way.

8. Pending Projects Memo, Pending Category III Projects Memo, Legislative Update

Memo. Chairman McCarty said that these items were for Commission information only, and asked if there were any questions. Commissioner Salmon voiced concern about all the cities and the new cities getting permits to dump wastewater into the rivers. One example is Mountain House; they tried unsuccessfully to get the Mountain House development to release its water further downstream. He said he's really concerned about who's watching and who's testing the wastewater from this area. He thinks that Deltakeeper needs to keep track of these activities, especially in the south Delta, where drinking water supplies are pumped south.

Chairman McCarty said that the number of acres under consideration for acquisition is getting to be large, and suggested that the Commission keep track of this as an aggregate number. Ms Aramburu said that Commission staff can prepare a one-page summary of this information. Chairman McCarty said that there are only around 400,000 acres of agricultural land in the Primary Zone, and at some point, the amount of land acquired or considered for acquisition will start substantially impacting the future uses of that land.

9. Review and Approval of Contract between Delta Protection Commission and CALFED for Participation in the Delta Dredging and Reuse Strategy Study.

Ms Aramburu said that Commission staff has been asked to participate in a CALFED Category III grant-funded study on the use within the Delta of materials dredged from Delta waterways for projects such as levee repair and habitat enhancement. CALFED indicated that this research and work was necessary, so a grant was given to the Secretary for Resources, who asked Department of Fish and Game to handle the project. DFG will be partnering with the Central Valley Regional Water Quality Control Board on this project. Commission staff has been asked to act as a coordinator of the proposed 12-chair committee; duties will include setting agendas and meeting dates, taking the minutes of the meetings, and sending out mailings. Lori Clamurro and Debby Eddy will be doing most of this work, and the Commission will be reimbursed for their time. Ms Aramburu will attend these meetings as an interested party, not for compensation. She noted that there is a Delta Protection Commission seat on the proposed committee, which should be filled by a Commissioner. This is a 2-year project, and the fiscal reimbursement should start in July, when it is expected that this committee will start to meet.

Commissioner Harris asked which waterways are proposed to be dredged in this project. Ms Aramburu answered that right now, the Regional Board does not have the ability to quickly and easily process dredging applications; they don't have any rules or criteria set up for dredging or reuse of dredged material. This project proposes to look at the science that's accepted in the United States as a whole, and to look at the particulars of the Delta based on the data that individual agencies and landowners have collected in various project analyses, and generally streamline this information to set up criteria by which the Regional Boards can process dredging projects.

Commissioner Brean said that according to the staff report, once the waste discharge requirements are met, there is still a requirement to comply with CEQA, and asked if this streamlined process would simply get to the point of processing some CEQA document sooner, or would it become a CEQA document itself, or would it ultimately perhaps lead to another categorical exemption. Ms Aramburu said that several years ago, Regional Board staff drafted a series of dredging agreements and prepared and circulated a Negative Declaration on those agreements. Even though they received no negative comments, they decided they needed an Environmental Impact Report (EIR). Because they didn't have the staff and money to do an EIR, they dropped the process. The goal of this project is to come up with enough science so that dredging can be easily incorporated into an environmental document. Commissioner Brean clarified that there would be a programmatic environmental document, and after that was in place, compliance with the criteria set up for the waste discharge requirements would mean that CEQA has been adequately addressed for that project. Ms Aramburu answered that the environmental document would be for the Regional Board to adopt the orders which would streamline that process.

Vice Chair Mello asked if the Executive Director could be the Delta Protection Commission's representative, instead of a Commissioner. Ms Aramburu said that this is not specified in the language.

Chairman McCarty then opened the public hearing for this item, inviting any public comments on the proposal for Delta Protection Commission to enter into this agreement with CALFED to provide the administrative services for this study project. There were no comments.

Vice Chair Mello said that he's very supportive of this project; the reclamation districts have needed it for a long time. By establishing a matrix of the information that has been gathered in the pursuit of dredge permits across the Delta and in various State programs, the RD's can save a lot of time and money. Also, for their second dredge project, Reclamation District 563 is facing a question of whether they need to go back and retest the sediments they just tested in their first project. He said that this CALFED project will really help streamline the dredge process, which is important to the Delta community in terms of increasing floodflows and bolstering levees.

Bill Curry asked about the consequences of a Commissioner not being visibly involved in this project. Chairman McCarty said it's very encouraging that the other agencies have made room at the table for a representative of the Commission. No matter what the land use is, having guidelines that can be used and applied uniformly to every dredging project is critical to getting these jobs done at an efficient cost and in a timely manner; today, the rules and regulations are very archaic or nonexistent. He said that not only should we have staff involved in this project and Margit attending as an interested party, but a Commissioner should participate at the table, because it does affect some of the Commissioners directly. Ms Aramburu could do a great job as a Commission representative, but the Commission should raise the level of visibility in its interest. Commissioner Calone agreed. On a motion by Vice Chair Mello and a second by Commissioner Harris, the motion was approved by voice vote.

Chairman McCarty said that a representative would need to be appointed, and suggested that if anyone is personally interested and believes they have the time and energy to devote to this, they let Margit or himself know, and they will make the appointment at the next meeting. Ms Aramburu said she'd contact the Commissioners not present at the meeting, to offer the opportunity to them as well.

10. Briefing and Possible Position on CALFED Revised Phase II Report, December 18, 1998. Ms Aramburu noted that the March 12 staff report on this agenda item included in the mailing packet had been revised and recirculated as a March 25 document. She thanked the members of the CALFED Subcommittee, Vice Chair Mello and Commissioners Yates and Curry, for going over those items on the previous afternoon. The Commission did receive a briefing on the Revised Phase II Report from Mr. Dick Daniel, and thought it would be appropriate to submit comments, because quite a number of policies outlined in the Phase II Report do reflect comments submitted by the Commission on the draft environmental document. Staff has read through the Revised Phase II Report and outlined those areas of concurrence (impacts to delta ag land, working on ecosystem enhancement projects on publicly owned land first, etc.), and also outlined a number of smaller issues that staff thought would be important to pass on to CALFED staff for consideration as they revise their program and write the environmental document to be released at the end of June. The comment letter is currently in list format; it would also include a cover section thanking CALFED for listening to the concerns of the Commission in earlier comments. If a letter is sent, Ms Aramburu would first have it reviewed by Chairman McCarty and Vice Chair Mello, chair of the CALFED Subcommittee. There were no changes at the CALFED Subcommittee meeting to the policy statements which support the Commission's position as expressed in the May 29, 1998 comment letter, with the exception of a couple of items that were added: the projects that are built need to enhance the species you want to protect; there is no need for a new group to oversee the existing levee subvention program; and need for assurances that CMARP will forward information to local governments and appropriate state agencies (Department of Food and Ag) as they monitor land use changes. Re pre-ROD actions, need to ensure that appropriate environmental review takes place and appropriate mitigation is included. She asked if there were any questions.

Vice Chair Mello, Chair of the CALFED subcommittee, thanked the other subcommittee members and Commission staff for all the work they put into the letter. He thanked Dick Daniel and CALFED staff for responding to the Commission's earlier comments, and said that he hoped these comments could be incorporated as well. Chairman McCarty then opened the public hearing on this item. There were no public comments. On a motion by Vice Chair Mello and a second by Commissioner Ferreira, the letter to CALFED was approved by voice vote.

Commissioner Yates suggested an amendment: the Commission reserves the right to comment on future changes to the Phase II Report which were not part of this review. This amendment was seconded by Commissioner Ferreira and approved by voice vote. Chairman McCarty directed Ms Aramburu to prepare the letter, and include in it that we have reserved the right to comment on any revisions to the December 18, 1998 Phase II Report.

11. Briefing and Public Workshop on Proposal of Cosumnes Preserve to Acquire and Modify Management of McCormack Williamson Tract, Sacramento County. Ms Aramburu said CALFED has asked that the Delta Protection Commission serve as a forum for public review and discussion of proposed projects in the Delta funded by CALFED. She noted the format for the staff report was reviewed and accepted by the Commission last July. She said Mike Eaton, manager of the Cosumnes Preserve, would brief the Commission on the status of the project. She said the goals of the project are to manage McCormack Williamson Tract to better manage flood waters in the North Delta and to enhance habitat values. She said the comments at the meeting would be incorporated into project development. She noted the project has received funding from CALFED.

Mike Eaton, project manager for the Nature Conservancy for the Cosumnes River Preserve introduced Valerie Calejari and Rick Cooper. He said there may be a few workshops on this project. Using a map, he described the lands in the Cosumnes Preserve including lands owned in fee title, lands subject to a conservation easement, and private lands which will be covered by an agreement with the Preserve. He said they have been interested in McCormack Williamson Tract for many years and were approached by a willing seller over a year ago. He described the strategic location of the parcel in terms of flooding issues, and habitat. He said the site is 1,603 ac in size, is in the floodway of the Mokelumne River, and noted they have received funds for acquisition of the site and for management of the site. There is an agreement with the current tenant to continue farming through the year 2000. During that time, plans will be developed for management of the site. CALFED is interested in a conveyance way and a freshwater tidal marsh. He said it is suitable for marsh habitat due to its elevation and soil type; and freshwater marsh is critical for endangered species--salmon--and this habitat is underrepresented. He said they understand that those goals may not be met, and that a lot of study and engineering must take place before a final physical design and management plan is developed and implemented. He said the staff report describes the site and the issues. He said they expect a contract to buy the site in two weeks, with acquisition within a 120 day window following.

Commissioner Yates asked if the site were to be converted from habitat to agriculture mitigation would be expected, and since CEQA says both habitat and prime agricultural land and important natural resources will there be mitigation for the loss of prime agricultural land at this site; Mr. Eaton said that is an important issue and a good question.

Commissioner Calone asked if there would be seepage impacts to surrounding agricultural lands and would flooding this island start a "domino effect" which would result in the flooding of other islands; Mr. Eaton said preliminary study indicates there will not be seepage due to its elevation, but this needs to be studied further. He said the site is basically a floodway because the east levee's height is required to stay at its current elevation. He said they hope to create a better situation than now. Commissioner Calone said restoration of tidal waters would erode the interior side of the levees which would expose levees on surrounding islands to additional floodwater; Mr. Eaton said protection of the interiors of the levees is a key concern for the project.

Commissioner Ferreira asked how impacts to downstream islands would be addressed; Mr. Eaton said one possible design would be a hardened weir at the east end to control water movement into the island, and noted that CALFED has set up a group to oversee development of an engineering solution to the local flooding problem which may include dredging and setback levees.

Commissioner Yates asked how much of the site would be under tidal waters; Mr. Eaton said in the summer about 80% would be inundated daily, and in the winter 100%. Commissioner Yates asked how much is irrigated now; Mr. Eaton said the net farmable land is about 1,450 acres. Commissioner Yates said the average water use for agriculture is about 3 ac ft, and the average use for tidal wetland is 7 ac ft; where will the water be obtained; Mr. Eaton said that is a good question which needs to be pursued.

Commissioner Salmon commented that the land in the Yolo Bypass proposed for inclusion in the North Delta National Wildlife Refuge was not very high quality land, its used for dry land farming, its not very valuable; but this site is designated Prime agricultural land. He expressed frustration with the proposed loss of these lands to agriculture to urban development in San Joaquin County, and said the cumulative loss of agricultural would be irreplaceable.

Chairman McCarty asked if fill would be placed in the site and the source of that fill; Mr. Eaton said the site could just be opened to tidal action, or the dirt on the site could be sculpted, but no imported fill has been proposed.

Commissioner Curry asked if there has been discussion of a second, exit weir at the southern end of the site; Mr. Eaton said no, but there is not a plan at this time for the southern end. Commissioner Curry said historically there was an outlet at the southern end. Commissioner Curry asked what level of review will be required for the Cosumnes Preserve's project; Mr. Eaton said they will have to prepare an environmental document and go through strict review-- Reclamation Board, State Lands Commission, County, etc.

Commissioner Ferreira asked that during the planning process the Preserve be aware of the lands to the south/downstream and that a flood control project needs to start at the downstream end and work up; the Preserve should not build a project which would push flood waters onto downstream landowners creating another problem.

Vice Chair Mello said he lives on Tyler Island, and he and others that live in the area know that this tract is critical in developing a solution to the flooding in the North Delta area. He said the island could be part of the solution to the regional flooding problems, or it could be the death knell. He said the local landowners cannot let this project go forward if it would be a detriment to flooding. He said the CALFED flooding study must extend to the San Joaquin River and said the McCormack Williamson Tract project must tie into the flood control project that moves water from the east side to the San Joaquin River. Mr. Eaton said the Corps of Engineers study will help address the flooding problems.

Commissioner Brean asked that the planning process consider keeping the upland portion of the site in agricultural use; Mr. Eaton agreed. He added retirement of farmland is not an easy decision for the Nature Conservancy, and said 80% of the Cosumnes Preserve is in agriculture, and the Preserve recognizes the habitat values on agricultural lands. He said in the context of the entire Delta, this may be a site that is so constrained by flooding that it may not be possible to retain the agricultural use.

Commissioner Yates said the planning process must evaluate possible impacts to adjoining or nearby farmland, and said wetlands must not restrict normal agricultural practices on adjacent lands. He suggested some type of safe harbor to protect farmers from endangered species issues; Mr. Eaton agreed.

Chairman McCarty suggested inclusion of buffers as outlined in the Commission's regional plan.

Chairman McCarty opened the floor to public comments. Bill Kirkham, eastside resident, said the transition between agriculture and eco-tourism is difficult because there are unanticipated impacts from the actions. He said he is a victim of flooding of the "Franklin Pond" because of the constriction of the levees around McCormack Williamson Tract and the Thornton-area levees. He said there needs to be a total solution which starts from the bottom and works up to move the waters out and away. He said his house is at elevation 15 and did not flood historically. He pointed out the location of his residence and the Franklin Pond on the map. Commissioner Harris asked if the flooding problem is being compounded due to construction in the Laguna area; Mr. Kirkham said that development affects Point Pleasant, but he is impacted by a different watershed.

Chairman McCarty closed the public comment period.

Commissioner Sanders asked the timeline for the planning process; Mr. Eaton said 18 months to two years is the minimum for the planning process. He said the specifics will be driven by the CALFED planning process for the North Delta flooding. Mr. Eaton said they are ready to implement a project which comes out of the larger planning process.

Commissioner Ferreira asked how the site will be maintained after the three years of CALFED maintenance funding has been spent; Mr. Eaton said in the interim the levees will be maintained by farm revenues, but there is no plan yet for long-term maintenance funding. He said on the Preserve, they set aside an endowment to fund maintenance of projects.

Chairman McCarty said the levee subvention funds are currently very limited, and suggested that the levee subvention funds should not be used to implement a habitat enhancement project; Mr. Eaton clarified that levee subvention funds would only be used as long as the site is maintained in agriculture. He said a marsh project would not be eligible for levee subvention funds.

Commissioner Curry asked the constraints or freedoms the Nature Conservancy faces when spending CALFED funds for acquisition; Mr. Eaton said CALFED complies with CEQA when it gives grants through a categorical exemption that exempts acquisition of lands for wildlife habitat. He added that there is no shelter to the Nature Conservancy for action on the site which would change the use; proposed changes would trigger CEQA review. Commissioner Curry asked if there are questions about the application of CEQA to acquisition of land; Mr. Eaton said there is no question to the Nature Conservancy.

Commissioner Curry asked Mr. Siegel to address this matter. Mr. Siegel had no comment. Ms Aramburu said Wildlife Conservation Board's approval of a grant for acquisition of a conservation easement was covered by a categorical exemption. Vice Chair Mello said he thought that was an issue which could be litigated.

Dick Daniel, CALFED staff, said CALFED does not believe there is a CEQA requirement for evaluation and public disclosure for granting money to buy a piece of land. Only when a land use change takes place, does CEQA need to be addressed. He indicated that there will be a wide range of alternatives studied on this site, and all those alternatives will be disclosed.

Vice Chair Mello asked if there will be public use of the property; Mr. Eaton said if the land is restored to tidal marsh it would be navigable, however, there is no plan at this time.

Vice Chair Mello asked if the land is under Williamson Act contract; Mr. Eaton said yes. Vice Chair Mello noted there are issues associated with taking sites under contract out of agricultural use and suggested that issue be researched. There was discussion of the need to delete a Williamson Act contract ten years prior to change in use.

Chairman McCarty summarized three key issues:

- Conversion of farmland.
- The source of additional water needed if converted from irrigated agriculture to wetland habitat.
- Adequacy of buffers between a restoration site and adjacent and nearby agricultural lands.

Chairman McCarty noted that protection of agricultural lands is one of the key responsibilities of the Delta Protection Commission, and that conversion of agricultural land to habitat is difficult for the Commission to address because it is new, complex and controversial. He suggested the Commissioners be open, honest and deal with this projects in a forthright manner, and work to develop a process for reviewing these projects that all groups can participate in and agree to.

Ms Aramburu asked for input on the staff report from the Commissioners and the public.

12. Election of Officers.

Chairman McCarty noted that the Chairman and Vice Chair are elected by the Commission for two year terms.

Commissioner Salmon nominated Pat McCarty for Chairman and Steve Mello for Vice Chair; seconded by Commissioner Yates.

Chairman McCarty said the Delta Protection Commission is at a transition, particularly the Commission's relationship with CALFED and its program are critical. He said there is also a transition of the Commission to a longer-lived agency that can develop a work program for a longer time frame to reach important goals. He said that all the Commissioners need to participate and work together, and he would be happy to serve as Chair to help.

Pat McCarty and Steve Mello were re-elected unanimously by voice vote.

Commissioner Calone said he is concerned about the widespread proposals to convert agricultural land to wildlife habitat--North Delta National Wildlife Refuge and the current McCormack Williamson Tract conversion. He suggested CALFED work on islands in the western Delta--Sherman and Twitchell--that have lost value as agricultural lands due to salinity intrusion. He noted the need to protect agricultural lands to feed the growing population.

Commissioner Harris commented that CALFED does not want to export salt water, only fresh water. He expressed concern that CALFED will continue to pursue a peripheral canal to export water from the north to the south.

13. Adjournment. The meeting was adjourned at 8:25 p.m.